

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4654 OF 1996

V.T.Deshmukh, General Secretary,)
Engineering and General Workers)
Trade Union, H. A. E.Colony,)
Pound Phata, Karve Road,)
Pune - 411 038.)..Petitioner.

V/s.

- 1) M/s.Tenacity Filters (Pvt) Ltd.,)
21/6, Hadapsar Industrial Estate)
Hadapsar, Pune - 411 013.)
2) M/s.Tenacity Adhesive (Pvt) Ltd.)
21/6, Hadapsar Industrial Estate)
Hadapsar, Pune - 411 013.)
3) M.S. Laxman, Managing Director,)
21/6, Hadapsar Industrial Estate)
Hadapsar, Pune - 411 013.) ..Respondents.

Mr.L.T.Satelkar for petitioner.

None for respondents.

CORAM : V.C.DAGA, J.

DATED : 21ST MARCH, 2006.

ORAL JUDGMENT

1. Heard the learned counsel for the petitioner.
None appears for the respondents.

FACTS

2. This petition is directed against the order

dated 16th January, 1996 in Complaint (ULP) No.7 of 1987 passed by the Industrial Court, Pune whereby the Industrial Court was pleased to partly allow the complaint filed by the complainant-petitioner herein.

3. The learned Industrial Court has declared that the respondents have indulged in unfair labour practices as per Item 9 of Schedule IV of the Unfair Labour Practices Act ['MRTU & PULP' Act] and deprived the retrenched workers of their legitimate benefits to which they were entitled under the the settlement with the respondents. However, while granting this relief, it was also held that the complainant-union failed to establish that the respondents have indulged in unfair labour practice after filing of the complaint. In other words, the contention of the Union that the respondents were indulging in any unfair labour practice even after filing of the complaint, came to be rejected. Consequently, the consequential reliefs claimed were also rejected.

4. Being aggrieved by the aforesaid order, the petitioner-union has filed this petition under Article 226 and 227 of the Constitution of India and prayed for setting the entire order including that part of the order which is in favour of the petitioner.

SUBMISSIONS

5. The learned counsel for the petitioner submits that ample evidence is on record to suggest that there was a continuing breach of agreement dated 25th July, 1985 by the respondent-employer. He further submits that a clear cut admission has been given by the witness who appeared for the employer that the respondent No.1 did not comply with the terms of the settlement. He submits that part of the order which is against the petitioner is liable to be quashed and set aside.

CONSIDERATION

6. Nobody is appearing on behalf of the respondents. With the assistance of the learned counsel appearing for the petitioner, I went through the evidence brought on record. In the evidence of the witness of the employer, who was working as a Managing Director of respondent Nos.1 & 2, the witness has, specifically, stated in his examination-in-chief that "it was agreed that we should make the payment to the employees one by one." The same was carried out after having consultation with the union. The Secretary of

the Union Mr.V.T.Deshmukh used to attend the meetings on behalf of the Union and discussions and negotiations used to be held with him.

7. He also stated in later part of his evidence that retrenchment compensation to the retrenched employees as per the provisions of agreement were paid. This piece of evidence has not at all been challenged in the cross-examination by the complainant-union. The omission to cross examine on this vital aspect of the matter leading to novation of the contract or agreement between the parties was made foundation of the impugned order by the Industrial Court. The Industrial Court in para No.20 of the impugned order has, specifically, relied upon the statement made by the witness for the respondents and recorded a clear cut finding that pending the complaint, the retrenchment compensation was paid to all the retrenched employees, not as per the terms and conditions of the said settlement, Exh.U-43 but as per the subsequent mutually modified agreement with mutual consent of the employees and their Union.

8. The Industrial Court has also taken into account the fact that the complainant union has not examined any of the retrenched employee who has not been paid retrenchment compensation. The Court below has

recorded categorical finding that the retrenched employees have been paid as per the terms and conditions of the agreement modified after due negotiations. The amount of retrenchment compensation has been accepted by all the employees who were retrenched by respondent Nos. 1 & 2. One of the witnesses Mr.Khan, examined on behalf of the Union, has also admitted in his evidence that after the settlement some discussions took place with the Union and the retrenched employees, and after reaching some understanding, the union directed their members- employees to accept retrenchment compensation. This aspect of the matter is also made a foundation of the impugned order to deny part of the relief in favour of the petitioner-union. It is, therefore, clear that there is absolutely no material available on record to reach to the conclusion that the adverse findings recorded by the Industrial Court are perverse.

9. Having examined the pleadings, evidence, nature of cross-examination and findings recorded by the Court below, as stated hereinabove it is difficult to reach to a conclusion that the impugned order is perverse. Mis-appreciation of evidence cannot be gone into by this in Writ jurisdiction as this Court is not a Court of Appeal to re-appreciate the evidence. In this view of the matter, no case is made out to interfere

with the order.

8. Petition is, therefore, dismissed. Rule
stands discharged with no order as to costs.
